

REMARKS

This Amendment is submitted in response to the Office Action mailed on December 21, 2006. Claim 12 has been amended, and claims 1-17 remain pending in the present application. In view of the foregoing amendments, as well as the following remarks, Applicants respectfully submit that this application is in complete condition for allowance and requests reconsideration of the application in this regard.

Applicants submit herewith a Terminal Disclaimer to obviate the nonstatutory obviousness-type double patenting rejections of claims 1-11 over claims 1-13 U.S. Patent No. 6,165,219 and claims 12-17 over claims 1-38 of U.S. Patent No. 6,740,091.

Claims 12-17 stand rejected under 35 U.S.C. §102(b) as being anticipated by Michelson, U.S. Patent No. 5,484,437. While Applicants respectfully traverse these rejections, Applicants have amended independent claim 12 to more sharply define the claimed invention over the prior art of record and respectfully request that the rejections be withdrawn.

In particular, Applicants have amended independent claim 12 to further recite that the first and second opposed surfaces extend predominantly in the direction of the longitudinal axis. Support for this amendment is shown in Figs. 7, 31, 32, 34 and 35. As Examiner will note, in each of these embodiments of the distraction spacer, the first and second diametrically opposed surfaces of main body 52 in Fig. 7, ramp surfaces (254) in Figs. 31-33 and ramp surfaces (503) in Figs. 34-36 extend

predominantly in the direction of the longitudinal axis (i.e., the diametrically opposed surfaces extend to a greater extent in the direction of the longitudinal axis than in the cross or transverse direction).

In contrast, the distractor (120) of Michelson (Figs. 3 and 3a) includes a plurality of forward facing ratchetings (124) that are disposed between the head (128) and the nose portion of the distractor. However, as Examiner will note, the surface of each ratcheting (124) extends predominantly transverse to the longitudinal axis of the distractor (120). Applicants respectfully submit that one of ordinary skill in the art would not be motivated to modify the geometry of each ratcheting (124) since this would destroy the intended purpose and function of the distractor (120).

Consequently, Applicants respectfully submit that Michelson taken alone, or in combination with the other prior art of record, fails to teach or suggest the combination of elements recited in amended independent claim 12 and the rejection should be withdrawn.

Moreover, as claims 13-17 depend from allowable independent claim 12, and further as each of these claims recites a combination of elements not taught or suggested by the prior art of record, Applicants submit that these claims are allowable as well.

Application No. 10/807,463
Amendment Dated 4/23/07
Reply to Office Action of 12/21/06

Conclusion

In view of the foregoing response including the amendments and remarks, this application is submitted to be in complete condition for allowance and early notice to this affect is earnestly solicited. If there is any issue that remains which may be resolved by telephone conference, Examiner is invited to contact the undersigned in order to resolve the same and expedite the allowance of this application.

Please see the electronic fee calculation sheet for the charge in the amount of \$130.00 for the Terminal Disclaimer fee for a large entity as required by 37 C.F.R. § 1.20(d). Also, please see the electronic fee calculation sheet for the charge in the amount of \$120.00 for the one month extension fee as required by 37 C.F.R. § 1.17(a)(1). If any other fees are necessary, the Commissioner is hereby authorized to charge any underpayment or fees associated with this communication or credit any overpayment to Deposit Account No. 23-3000.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

/David H. Brinkman/
David H. Brinkman, Reg. No. 40,532

2700 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202
(513) 241-2324 - Voice
(513) 421-7269 - Facsimile